



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Acquisition Bulletin No. 15-02
January 7, 2015
Deviation No. 2015-00002

MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS

FROM:

Chris B. Cooper
IRIS B. COOPER,
SENIOR PROCUREMENT EXECUTIVE,
OFFICE OF THE PROCUREMENT EXECUTIVE

SUBJECT: Class Deviation—Prohibition Against Using Funds to contract with Corporations that Have a Unpaid Federal Tax Liability or Was Convicted of a Felony Criminal Violation under Federal Law

Purpose: This class deviation is issued in accordance with FAR 1.404 to implement provisions from Sections 744 and 745 of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) or any other Act, which includes such prohibition.

Effective Date: Upon issuance

Expiration Date: Until superseded, incorporated in the FAR or DTAR or otherwise rescinded.

Background: Within the Consolidated and Further Continuing Appropriations Act, 2015, Sections 744 and 745 prohibit the use of funds made available by this or any other Act to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has an unpaid Federal tax liability that has been assessed or was convicted of a felony criminal violation under any Federal law within the preceding 24 months. Similar provisions appeared in several previous fiscal year appropriations; these provisions continue to apply to funds made available under those acts. The below language is from Sections 744 and 745 of the Consolidated and Further Continuing Appropriations Act, 2015.

SEC. 744. None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

SEC. 745. None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

The Chair of the Civilian Agency Acquisition Council (CAAC) issued a memorandum dated November 21, 2013 (i.e. CAAC Letter 2014-01), recommending that each affected agency by this prohibition, including Treasury, issue a class deviation to implement their fiscal year appropriations statute. This memorandum is still in effect and applies to the Consolidated and Further Continuing Appropriations Act, 2015 or any other Act, unless specifically stated otherwise therein. Further, the issuance of this memorandum provides in effect the consultation for a class deviation as described in FAR 1.404(a)(1). Therefore, the Senior Procurement Executive has determined that the issuance of this class deviation is authorized and necessary to implement provisions from Sections 744 and 745 of the Consolidated and Further Continuing Appropriations Act, 2015 or any other Act, unless specifically stated otherwise therein.

Required Bureau Action:

1. **Applicability.** This class deviation applies to any contract that will use funds made available by the Consolidated and Further Continuing Appropriations Act, 2015 or any other Act, unless specifically stated otherwise therein. The term “contract” as used herein has the same meaning as it is defined in FAR 2.101.
2. **New Actions to Enter into a Contract.** Contracting officers shall include the provision at 1052.209-71 (see Attachment A) in all solicitations, including solicitations for acquisition of commercial items under FAR part 12, that will use funds made available by the Consolidated and Further Continuing Appropriations Act, 2015 or any other Act, unless specifically stated otherwise therein.
3. **Existing Contracts where new work not previously contemplated is being added.** Contracting officers shall provide the provision at 1052.209-71 (see Attachment A), to a corporation for completion prior to the issuance of any modification that involves the addition of work not previously contemplated (i.e. an ‘out of scope’ modification) that will use funds made available by the Consolidated and Further Continuing Appropriations Act, 2015 or any other Act, unless specifically stated otherwise therein.
4. **Action to Take upon Receipt of an Affirmative Response.** Contracting officers shall not award a contract with any corporation that provides an affirmative response to paragraph (b)(1) or (b)(2) of the provision at 1052.209-71, unless the Treasury’s Suspension and Debarment official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interest of the Government.

When an affirmative response to paragraph (b)(1) or (b)(2) of the provision at 1052.209-71 (see Attachment A), is received, contracting officers shall promptly contact Treasury’s Suspension and Debarment official at TreasuryS&D@treasury.gov and await their direction before proceeding with award. The Treasury’s Suspension and Debarment official will notify the



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

contracting officer of their determination. A copy of the Suspension and Debarment official's determination shall be placed in the file.

Additionally, if the contract award at issue includes appropriated funds from another agency, the contracting officer must consult with procurement officials of that other agency as to whether and to what extent the two provisions appear in that agency's fiscal year appropriation and whether the Suspension and Debarment official for that agency has considered suspension or debarment and has determined such actions not necessary.

5. Bureau Chief Procurement Officers Responsibilities. BCPOs shall

- a. Ensure dissemination of this AB to all impacted personnel;
- b. Update any related Bureau policies and procedures impacted by this AB; and
- c. Monitor bureau compliance with this AB and provide OPE notification of any instances of non-compliance along with the corrective action(s) taken to address the matter of non-compliance.

Additional Information: My point of contact for this AB is Mr. Thomas O'Linn, who may be reached at thomas.olinn@treasury.gov or OfficeoftheProcurementExecutive@treasury.gov.



**Attachment A –
Acquisition Bulletin No. 15-02
Class Deviation (Deviation No. 2015-00002)**

1052.209-71 Representation by Corporations Regarding a Unpaid Federal Tax Liability or Conviction of a Felony Criminal Violation under Federal Law.

As prescribed in Treasury Acquisition Bulletin No. 15-02 - Class Deviation, insert the following provision in all solicitations that will use funds made available by the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) or any other Act, unless specifically stated otherwise therein, including solicitations for acquisition of commercial items under FAR part 12:

REPRESENTATION BY CORPORATIONS REGARDING A UNPAID FEDERAL TAX LIABILITY OR CONVICTION OF A FELONY CRIMINAL VIOLATION UNDER FEDERAL LAW (DEVIATION 2015-00002) (JAN 2015)

(a) In accordance with Sections 744 and 745 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) none of the funds made available by this or any other Act may be used to enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is ☐ is not ☐ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(2) It is ☐ is not ☐ a corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months.

(End of provision)